

U.S. Application No.:10/023,173
AMENDMENT G

Attorney Docket No.: 3968-043

REMARKS

Review and reconsideration of the Office Action of February 21, 2006, is respectfully requested in view of the above amendments and the following remarks.

No new matter has been added to the claims or the specification.

For the reasons set forth below, Applicants believe that all the claims are now in conditions for allowance.

Status of the Claims

Claims 1-6 and 8 are pending.

Claims 1-6 and 8 are rejected.

Office Action

Turning now to the Office Action in greater detail, the paragraphing of the Examiner is adopted.

Claim Rejections – 35 U.S.C. § 112

Claims 1-6 and 8 are rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the written description requirement.

The Examiner firsts asks where in the specification support can be found for "repeated steps".

In response, Applicants refer the Examiner to page 4, lines 25-31 of the specification, teaching "the flavor, thus adapted, is incorporated into the new matrix. This can then be analyzed in turn by static headspace chromatography in order to check the result of the flavor adaptation. For this, again, the peak area values of the individual flavor compounds can be normalized to 100%. The adaptation can be considered to be successful if the headspace profile (peak area percentages) agrees with the headspace profile of the base matrix." Page 5 refers to checking and correcting the flavor. Obviously, if the results are not fully successful the

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adaptation is fine-tuned, and if the results are successful after the first adaptation no repeating of the steps is necessary.

Next, the Examiner considers the specification not to each what is meant by "substantially corresponds".

In response, Applicants submit that the present invention is in the field of flavors and fragrances, a less than precise art. The art being inherently imprecise, on reconsideration Applicants consider that the term "substantially" is not required and delete this term from claims 1 and 8.

Withdrawal of the rejections is respectfully requested.

Claim Rejections – 35 U.S.C. §103(a)

Claims 1-6 and 8 are rejected under 35 U.S.C. §103(a) as being obvious over Hornstein in view of Ashurst.

According to the Examiner, Hornstein discloses a process for identification of flavor by subjecting isolates and fractions of a flavor to headspace analysis, combining isolates or fractions from separate batch operations for further fractionation and analysis, and using sensory evaluation to evaluate the results (see entire document, especially pages 72 and 83). Hornstein also discloses analysis of a flavor extract under two or three sets of conditions (page 83). Hornstein discloses multiple analyses using gas chromatography to obtain a final analysis.

The Examiner acknowledges that the present claims differ as to the specific use of the data to prepare a flavor.

Ashurst discloses flavor manufacture based on analysis of flavor materials (see pages 122-125).

Thus, according to the Examiner, it would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use prepare a flavor as taught by Ashurst from the information provided by Hornstein because the use of flavor analysis to produce flavors is conventional in the art. Applicant uses known steps to obtain expected results.

Applicants respectfully traverse.

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As simply stated at page 5, line 20 of the present specification, **"Surprisingly, using the inventive process, flavor adaptation can be carried out considerably faster and more goal-orientedly, than by a purely flavoristic/sensory approach."**

Hornstein teaches that a headspace gas chromatography result correlates with the results of a taste analysis by an expert panel. Hornstein further describes a number of variants for headspace gas chromatography analysis, and how the choice of raw materials (e.g. potato powder) can effect the taste of a final product. However, Hornstein fails to teach anything in view of the adaptation of aroma mixtures to different base matrices, and particularly does not provide any teaching how a headspace gas chromatography analysis could aid in such adaptation of aroma mixtures. Instead, Hornstein emphasises that all headspace gas chromatography analysis results must be re-evaluated by a tester panel (e.g. top of page 78). The skilled person thus only learns from Hornstein that headspace gas chromatography analysis is an interesting and valuable technique for discovering the composition of a product, but Hornstein does not indicate to the skilled person that headspace gas chromatography analysis would be valuable for making taste predictions when adapting an aroma composition to a different base matrix.

The publication of Ashurst, on the other hand, only teaches that an analysis of pure substances is necessary for composing an aroma composition, Ashurst specifically mentions that "tailor-made flavours may seem to some to be today only a matter of raw material purchasing; actually **much work remains to be done** to reach this aim. Substances identified in food have to be evaluated, either singly or in a mixture according to their threshold level, toxicologically tested and correctly synthesized in an economical way" (page 125). Ashurst lays great emphasis on the fact that "the **blending together of flavour ingredients to create a satisfying flavour still remains a highly sophisticated process based on a long practical experience coupled with a very deep knowledge of the subject**" (page 125, first sentence). Ashurst thus is not at all concerned with any teaching regarding the adaptation of aroma mixtures to different base matrices, and furthermore emphasises that there is no reliable way of creating any satisfying flavour.

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Ashurst does refer to headspace gas chromatography analysis, but this is only in a text section summarizing analytical techniques. Ashurst does not draw any conclusion regarding the adaptation of flavour mixtures to different base matrices.

The skilled person, when reading the Hornstein and Ashurst references, could thus only have learned that the production of any satisfying flavour depends on the gut feeling of a skilled flavorist with a long practical experience coupled with a very deep knowledge of the subject. Furthermore, he learns that analytical techniques of chemistry are of limited use to the flavourist, as a re-evaluation by a tester panel is always necessary. And with respect to the problem of the invention, i.e. providing a method for adapting aroma compositions to different base matrices, the skilled person does not obtain any hint or indication how the problem might be solved other than the hitherto common trial-and-error-technique (i.e. depending on the flavourists gut feeling). Given that the process of creating a satisfying flavour under all circumstances requires, as Ashurst concedes, a long practical experience of a flavourist with very deep knowledge of the subject, it seems to us that there is hardly any better way of describing that a process like the one of the present and claimed invention, which reliably aids in the highly sophisticated process of creating a satisfying flavour for different matrices, is in fact based on an inventive step.

Request for Telephone Interview

Applicants note that the Examiner had previously mentioned that the present application does comprise allowable subject matter, and that it was just a matter of finding the right claim language. In view of the desire to formulate acceptable claims, Applicants request a telephone conference with the Examiner.

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Accordingly, it is respectfully submitted that the claims as amended are in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account Number 50-0951.

Favorable consideration and early issuance of the Notice of Allowance are respectfully requested. Should further issues remain prior to allowance, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number.

Respectfully submitted,

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Date: July 21, 2006

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